



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-880
Regulation title	Passport Denial Program
Action title	Outline the agency's standards for a noncustodial parent's release from the Passport Denial Program.
Date this document prepared	August 19, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

This regulatory action will create a new regulation section entitled "Passport Denial Program" to comply with federal law (42 USC 654), which requires states to develop a procedure for certifying to the federal Office of Child Support Enforcement noncustodial parents who are eligible for the Passport Denial Program as described in 42 USC 652(k). The regulation will outline the provisions of the Passport Denial Program for Virginia's Division of Child Support Enforcement (Division). The regulation will describe the program, a noncustodial parent's release from the program, and the appeal process. The regulation will require the Division to certify to the United States Department of State, through the federal Office of Child Support Enforcement, all individuals who meet the federal threshold for passport denial.

Once the arrearage is submitted for certification, the federal Office of Child Support Enforcement will notify the noncustodial parent of the certification and the noncustodial parent may appeal the decision with an administrative hearing through the Department of Social Services (DSS). The only issues reviewable on appeal will be the amount of the arrearage at the time of certification and mistaken identity. The noncustodial parent will remain in the Passport Denial Program until the arrearage has been paid in full. The new regulation provides an exception for a life or death situation of an immediate family member.

Statement of final agency action

The State Board of Social Services approved the proposed action on August 19, 2009.

Legal basis

Section 63.2-217 of the Code of Virginia (Code) states that the State Board of Social Services shall adopt regulations, not in conflict with this title, as may be necessary or desirable to carry out the purpose of this title.

Purpose

This regulatory action will create a new regulation entitled "Passport Denial Program" to comply with federal law set forth in 42 USC 654, which requires states to develop a procedure for certifying to the federal Office of Child Support Enforcement noncustodial parents who are eligible for the Passport Denial Program as described in 42 USC 652(k). The regulation is necessary because the Code contains no description of the program and consequently offers the noncustodial parent no information on the release from the program or the appeal process.

Rationale for using fast track process

DSS does not believe that the proposed regulation will be controversial. DSS currently has the authority to place noncustodial parents in the Passport Denial Program and the authority, by federal regulation, to set the standards for release from the program. The new regulation will outline the provisions of the Passport Denial Program in Virginia, including how a noncustodial parent is released from the program and the appeal process, neither of which is currently provided for in Code or regulation.

Substance

This regulatory action will create a new regulation entitled "Passport Denial Program" to comply with federal law (42 USC 654) which requires states to develop a procedure for certifying to the federal Office of Child Support Enforcement noncustodial parents who are eligible for the Passport Denial Program as described in 42 USC 652(k). The new regulation will outline the provisions of the Passport Denial Program in Virginia, including how a noncustodial parent is released from the program and the appeal process, neither of which is currently provided for in Code or regulation.

Issues

There are numerous advantages to this regulatory action. The new regulatory section will (1) establish the provisions of the Passport Denial Program in Virginia; (2) describe how a noncustodial parent will be released from the program and the program’s appeal process; and (3) create statewide consistency in how the Passport Denial Program is administered in Virginia.

DSS is aware of no disadvantage to this regulatory action.

Requirements more restrictive than federal

This regulatory action is consistent with current federal requirements and guidance.

Localities particularly affected

No locality will be disproportionately affected by the proposed regulatory action.

Regulatory flexibility analysis

This regulatory action will have no impact on small businesses.

Economic impact

The purpose of this regulatory action is to comply with federal regulations pertaining to the Passport Denial Program. The program was implemented in Virginia in 1997. Approximately 86,000 Virginians have been denied either an initial passport or renewal of an existing passport since the inception of the program. Over \$1 million dollars has been collected over the past four years as a result of this program, with \$393,468 collected in State Fiscal Year (SFY) 07 alone.

This regulatory action will not have any financial impact on the program.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The Passport Denial Program was implemented in 1997. There are no additional projected costs due to the passage of this regulation.
Projected cost of the regulation on localities	None.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Noncustodial parents who owe \$2,500 or more in child support arrearage.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales	Affected noncustodial parents would be those who have a need to travel outside the country and owe \$2,500 or more in child support arrearage. Approximately 86,000 Virginians have been denied a passport since the inception of the program in 1997.

of less than \$6 million.	
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	Payment of child support arrearage owed by those noncustodial parents.

Alternatives

As an alternative to adding a new regulatory section, the Division could reference federal regulations which outline the Passport Denial Program. The Division determined that it is most beneficial for the custodial parent, noncustodial parent, and applicable state and federal agencies, for the Division to create a specific regulation regarding the Passport Denial Program within the Virginia Administrative Code.

As an alternative to the proposed language of the new regulatory section, the Division could request the release of a noncustodial parent from the Passport Denial Program prior to satisfying the arrearage. The Division determined that releasing a noncustodial parent from the program before satisfying the arrearage may negatively impact the custodial parent and ultimately the children for whom support is owed. Since DSS is unable to enforce orders for countries which do not have an interstate agreement with the United States, and enforcement is difficult and time consuming where agreements exist, there would be no way for DSS to assist custodial parents owed current support or arrears should the noncustodial parent leave the country with a valid passport.

This regulatory action will not impact small businesses.

Family impact

This regulatory action will not negatively impact the rights of noncustodial parents with regard to their children. Should the noncustodial parent need his/her passport for economic reasons, it can be obtained by satisfying the arrearage. This regulation will not impact marital commitment. The Passport Denial Program will not impact disposable family income. The arrearage which must be satisfied prior to release from the program is only composed of ordered child support payments which weren't previously paid.

Release from the Passport Denial Program can also occur with proof of a life-or-death situation of an immediate family member.

Detail of changes

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
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	22-VAC-880-405		<p>The new regulation will explain that individuals meeting the federal threshold for passport denial will be certified to the Department of State through the federal Office of Child Support Enforcement for the Passport Denial Program.</p> <p>Once the arrearage is sent for certification, the federal Office of Child Support Enforcement will notify the noncustodial parent of the certification.</p> <p>The individual may appeal the decision through DSS. The only issues reviewable on appeal are the amount of the arrearage at the time of certification and cases of mistaken identity.</p> <p>The individual will remain in the Passport Denial Program until the arrearage has been paid. The only exception to this is with the sole approval of the Division Director in a life or death situation.</p>
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